

**AMERICAN ARBITRATION ASSOCIATION  
NO-FAULT/ACCIDENT CLAIMS**

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In the Matter of the Arbitration between

(Claimant)

v.  
HERTZ CLAIM MANAGEMENT  
(Respondent)

AAA CASE NO.: 18 Z 600 06625 02  
INS. CO. CLAIMS NO.: 02-2001-1367  
DRP NAME: Michael F. Carnevale II  
NATURE OF DISPUTE: Coverage

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**AWARD OF DISPUTE RESOLUTION PROFESSIONAL**

**I, THE UNDERSIGNED DISPUTE RESOLUTION PROFESSIONAL (DRP)**, designated by the American Arbitration Association under the Rules for the Arbitration of No-Fault Disputes in the State of New Jersey, adopted pursuant to the 1998 New Jersey "Automobile Insurance Cost Reduction Act" as governed by *N.J.S.A. 39:6A-5, et. seq.*, and, I have been duly sworn and have considered such proofs and allegations as were submitted by the Parties. The Award is **DETERMINED** as follows:

Injured Person(s) hereinafter referred to as: FL.

1. ORAL HEARING held on July 23,2002.
2. ALL PARTIES APPEARED at the oral hearing(s) .

NO ONE appeared telephonically.

3. Claims in the Demand for Arbitration were NOT AMENDED at the oral hearing (Amendments, if any, set forth below). STIPULATIONS were not made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

It is undisputed that FL was injured in a bus accident on December 24, 2000. The issues in this case are medical necessity and reasonableness of treatment rendered for lumbar and cervical spine and right knee injuries received in the accident, as well as the question as to whether or not respondent's bus was required to have personal injury protection (also referred to as medical expense benefits) to cover FL's related medical expenses.

The bus on which FL was riding as a paying passenger was owned by NJ Transit and operated by and insured on behalf of Academy Bus on a transit route under a contract with NJ Transit. FL contends that applicable insurance law, particularly NJSA 17:28-1.6,

requires Academy Bus to maintain medical expense insurance for its passengers. Respondent takes the position that Academy Bus is in the same shoes as NJ Transit, and enjoys its immunities and, presumably, is under no obligation to provide insurance coverage to passengers.

The statute provides, in relevant part, at NJSA 17:28-1.6a that "every owner, registered owner or operator of a motorbus registered or principally garaged in this state shall maintain medical expense benefits coverage, under provisions approved by the Commissioner, for the payment of benefits without regard to negligence, liability or fault of any kind, to any passenger who sustained bodily injury as a result of an accident while occupying, entering into or alighting from a motorbus."

The Appellate Division in the case of *Nebinger v. Maryland's Cas. Co.* held that "from the language of the statute and its legislative history, it is clear that the legislature intended to mandate MEB [PIP] coverage primarily for the protection of passengers of commercial buses which operate regular routes as well as charter buses", 312 NJSuper. 400, 407(AppDiv 1998).

Respondent disputes that the bus in question is a motor bus within the meaning of the foregoing statute, and instead relies on NJSA 17:28-1.5(g) which provides in relevant part that "any motorbus owned and operated by the New Jersey Transit Corporation" is excluded from the relevant definition of "motorbus". Respondent's reliance is misplaced. The statute, in plain language, uses the conjunctive "and", thus clearly expressing the legislative intent that NJ Transit must both own and operate the bus in question for immunity to attach. In this case, where NJ Transit does not operate the bus in question, both required prongs of the test are not met, and no immunity attaches. The bus in question is a motor bus within the meaning of NJSA 17:28-1.6a, mandating MEB coverage.

Based on the clear language of the statute, and on the Appellate Division's common sense and well reasoned interpretation of the statute, I conclude that respondent is required by law to provide medical expense benefit (or PIP benefits) to FL, and is responsible for payment of charges for reasonable and necessary medical treatment provided to FL for treatment for injuries received in the accident in question, subject to limits of liability as set forth in relevant law.

Respondent's other arguments are similarly misplaced. Respondent at this time is estopped from asserting that it is the wrong party, as it has acted and presented itself as the proper party in interest (going so far as to set IME's) during the course of the arbitration, and only identifying another entity as, in its view, the correct party in interest at the time of the hearing of this matter. Equity requires, at this time, that this matter go forward with the same parties which have been involved in this case since the December 2000 accident. The other decisions cited in this case are not binding on this DRP. The Superior Court result cited by Respondent is unpublished, and I do not have the benefit of the Judge's rationale in the record. With respect to the result of another AAA arbitration favorable to respondent, I respectfully disagree with my learned colleague.

FL received treatment from the orthopaedist Gregory Lane, MD, who diagnosed lumbar and cervical bulges as well as right knee internal derangement, and also from the chiropractor, James Wolff, for neck and back pain. Based on the record before me I find that the treatment and diagnostics rendered to FL were accident related, and were reasonable and medically necessary to treat FL's accident-related injuries, and I conclude that those charges are payable by respondent as medical expense benefits, subject to relevant fee schedule, copay and deductible, if any.

Claimant's attorney is entitled to reasonable attorney's fees, and by application of RPC 1.5, and in view of the time necessary to reasonably prepare and present this case, I find that fee to be \$1,300.00, which is consonant with the award.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Univ Radiology	\$88.00	\$88.00	Provider
Edison Metuchen Ortho	\$147.00	\$147.00	Provider
Perth Amboy Diagnostic	\$4,250.00	\$4,250.00	Provider
Perth Amboy Chiro	\$3,176.60	\$3,176.60	Provider

Explanations of the application of the medical fee schedule, deductibles, co-payments, or other particular calculations of Amounts Awarded, are set forth below.

6. INCOME CONTINUATION BENEFITS: Not In Issue

7. ESSENTIAL SERVICES BENEFITS: Not In Issue

8. DEATH BENEFITS: Not In Issue

9. FUNERAL EXPENSE BENEFITS: Not In Issue

10. I find that the CLAIMANT did prevail, and I award the following COSTS/ATTORNEYS FEES under N.J.S.A. 39:6A-5.2 and INTEREST under N.J.S.A. 39:6A-5h.

(A) Other COSTS as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$325.00

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$1,300.00

(C) INTEREST is as follows: waived per the Claimant. \$ .

This Award is in **FULL SATISFACTION** of all Claims submitted to this arbitration.

January 9, 2003  
Date

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Michael F. Carnevale II, Esq.